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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,049	03/11/2004	Saul Garza	24191.00	4690

7590 07/27/2004
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EXAMINER

LEE, Y MY QUACH

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/797,049

Applicant(s)

GARZA, SAUL

Examiner

Y Quach Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,10 and 11 is/are rejected.
- 7) ☒ Claim(s) 3-5 and 7-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/11/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the reference sign (150) as mentioned on lines 12 and 15 of page 10 and line 2 of page 11 in the description. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: Page 7, line 9, the term "Cotter" should be changed to --cotter--. The term should be capitalized and be accompanied by the generic terminology if it is a trademark. Page 8, lines 5 to 6, the term "each of" should be inserted before the term "The plurality ..." and the term "are" should be changed to --is-- on line 6 of the same page in view of the terms "an" and "a" on line 7 of the same page. Appropriate correction is required.

Claim Objections

3. Claims 1 to 11 are objected to because of the following informalities: In claim 1, lines 3 and 11, the term "a planter" is improper and should be changed to --the planter-- since the term "a planter" had already been established on line 1 of the claim. In claim 5, line 2, the term "each of" should be inserted before the term "the plurality ..." and the term "are" should be changed to --is-- in view of the term "an" and "a" on line 3. In claim 7, line 2, the term "Cotter" should be changed to --cotter--. In claim 10, line 4, the term "a planter" should be changed to --the planter-- in view of line 1 of claim 1. Claims 2 to 4, 6, 8, 9 and 11 depend on objected claim 1 and as such are also objected. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1, 2, 6, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rubenstein in view of Triglia, Day and Chang.

Rubenstein discloses a core stem (12) with a proximal end and a distal end to provide structure for a palm tree in a planter with a plurality of leaves attached to the core stem. However, Rubenstein does not disclose a planter box, a base within the bottom of the planter box with a flange, and that each of the leaves is a sheet metal with a thread stem, a plurality of artificial coconut lights, an electrical cord, and a plug.

Triglia teaches a planter box (60) with a bottom to receive and hold a core stem (44) in an upright position, a base (50) disposed within the bottom of the planter box and having a flange (figure 2) to receive the proximal end of the core stem.

Day teaches a plurality of leaves (54) each with a thread stem (64) attached to a core stem.

Chang teaches a plurality of embellishing lamps (5), readable as “artificial coconut lights”, disposed on a distal end of the core stem and adjacent to the core stem of an artificial tree to illuminate the tree, and an electrical cord (4) with a plug to provide power from a power source to the lights.

It would have been obvious to one skilled in the art to provide Rubenstein with a planter box, as shown by Triglia, to receive and hold the core stem so that the palm tree of Rubenstein can be placed at different locations as desired.

It would have been obvious to one skilled in the art to attach the leaves of Rubenstein to the core stem with the thread stems, as shown by Day, so that not only the leaves are easily detachable from the core stem but can also be easily arranged at different positions of the core stem to form different structures of the palm tree.

It would have been obvious to one skilled in the art to provide Rubenstein with a plurality of artificial coconut lights, an electrical cord and plug, as shown by Chang, to provide power source to the lights to further enhance the illumination around the tree while providing ornamental effects to the tree.

It would have been an obvious matter of design choice to make the leaves of Rubenstein metal leaves, since such a modification would have involved a mere change in the material of a

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component and is therefore deemed to fall within a purview of an ordinary engineering design technique to form the leaves metal to reflect the lights around the tree to fully illuminate the tree.

With regards to claim 2, it would have been an obvious matter of design choice to make the core stem of Rubenstein pressure treated wood, since such a modification would have involved a mere change in the material of a component and is therefore deemed to fall within a purview of an ordinary engineering design technique to form the core stem pressure treated wood to protect the core stem to enhance the reliability and longevity of the core stem.

With regards to claim 6, it would have been an obvious matter of design choice to add dead fronds to the tree of Rubenstein, which provides no unusual, unobvious and or unexpected result and is therefore deemed to fall within a purview of an ordinary engineering design technique to add the fronds to the tree to further enhance the decorative effects of the tree.

6. Claims 3 to 5 and 7 to 9 would be allowable if rewritten to overcome the objection set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Peroni, Potter, Onate and Ruggles are cited to show other pertinent decorative artificial tree and lamp post.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Y Quach Lee whose telephone number is 571-272-2373. The examiner can normally be reached on Tuesday and Thursday from 8:30 am to 4:30 pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Customer Service whose telephone number is 571-272-2815.

Y. Q.
July 22, 2004


Y Quach Lee
Patent Examiner
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